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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MAURO JR, THOMAS J

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 02/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/703,349

Applicant(s)

DAY ET AL.

Examiner

Thomas J. Mauro Jr.

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 January 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This action is responsive to the amendment (Paper #4) filed on 1/6/2004. Claims 1-7 are pending and are presented for further examination.
2. A formal action on the merits of amended claims 1-7 follows.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-4 and 7 are rejected under 35 U.S.C. 102(e) as being anticipated by Kellner (U.S. 6,539,099).

With respect to claim 1, Kellner teaches a method for interacting between participants through a network of computers, comprising:

analyzing successive video images received as input from a camera capturing video of at least one of the participants for an actual physical gesture made by the one participant [**Kellner - Figures 1 and 2 and Col. 4 lines 43-55 – Video camera collects images of user's gestures and features**]; and

automatically generating a command to a software program enabling a real time communication [Kellner -- Col. 4 line 29 – Real time communication is a chat session] between the participants to send a representation of the actual physical gesture within the real time communication [Kellner -- Col. 5 lines 66-67 – Col. 6 lines 1-4 and lines 23-24 and Col. 8 lines 34-50 – After image from camera is analyzed, a character image is altered to represent the gesture made by the user and transmitted during chat session to user on other end].

With respect to claim 3, Kellner teaches a method for communicating between participants through a network of computers, comprising:

analyzing images of at least one of the participants received as input for an actual physical gesture [Kellner -- Figures 1 and 2 and Col. 4 lines 43-55 – Video camera collects images of user's gestures and features];

associating each of a plurality of physical gestures to separate commands of an application program interface for communicating in real time between the participants [Kellner - Col. 8 lines 26-49 – Gestures from the video camera are read into system and instructions or commands associated with the gesture causes the image to be altered accordingly]; and

transmitting an associated command associated with the actual physical gesture from the analyzed images to the application program interface to send a representation of the actual physical gesture within the real time communication for communicating between the participants [Kellner -- Col. 5 lines 66-67 – Col. 6 lines 1-4 and lines 23-24 and Col. 8 lines 34-50 – After image from camera is analyzed, a character image is altered through commands and

**instructions from the gesture to represent the actual physical gesture made by the user and transmitted during the chat session to the user on other end].**

With respect to claim 4, this is a system claim corresponding to the method claimed in claim 1. It has similar limitations; therefore, claim 4 is rejected under the same rationale.

With respect to claim 7, Kellner teaches a computer program, on a computer readable medium, having computer readable program code means for enabling an interaction between participants through a network of computers [**Kellner -- Col. 2 lines 51-52 -- Computer program, which inherently contains code and is stored on a computer readable medium, carries out the system for a visual chat**]. The remaining limitations of this claim are similar to the method claimed in claim 1. Therefore claim 7 is rejected under the same rationale.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2 and 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kellner (U.S. 6,539,099) in view of Hatlelid (U.S. 6,404,438).

Art Unit: 2143

Regarding claim 2, Kellner teaches the invention substantially as claimed, a method for interacting between participants through a network of computers, comprising:

analyzing successive video images received as input from a camera capturing video of at least one of the participants for an actual physical gesture made by the one participant [**Kellner - Figures 1 and 2 and Col. 4 lines 43-55 – Video camera collects images of user's gestures and features**]; and

automatically generating a command for the action to a software program enabling a real time communication [**Kellner -- Col. 4 line 29 – Real time communication is a chat session between the participants thereby sending a representation of the actual physical gesture within the real time communication [Kellner -- Col. 5 lines 66-67 – Col. 6 lines 1-4 and lines 23-24 and Col. 8 lines 34-50 – After image from camera is analyzed, a character image is altered to represent the gesture made by the user and transmitted during the chat session to user on the other end]**].

Kellner fails to explicitly teach determining a state of the actual physical gesture and accessing a table for an action associated with the determined state.

Hatlelid teaches a system for determining if a trigger is a first occurrence or not, upon which a different behavioral movement for a given trigger exists in a table depending on the occurrence number, i.e. first occurrence or not [**Hatlelid -- Figure 12a and Col. 28 lines 18-26**].

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate assigning different behavioral movements for a given trigger based upon the occurrence, i.e. first occurrence or not, as taught by Hatlelid into the visual chat system of

Kellner, in order to provide a variety of different behavioral movements associated with a given trigger.

Regarding claim 5, this is a system claim corresponding to the method claimed in claim 2. It has similar limitations; therefore, claim 5 is rejected under the same rationale.

Regarding claim 6, Kellner-Hatlelid teach the invention substantially as claimed, wherein the associative mapping is a table [**Hatlelid -- Figure 12a and Col. 18 lines 57-59 – Table, as is shown in figure 12a is what links the triggers with the associated actions**].

#### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-7 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

Art Unit: 2143

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mauro Jr. whose telephone number is 703-605-1234. The examiner can normally be reached on M-F 8:00a.m. - 4:30p.m..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 703-308-5221. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TJM

February 17, 2004



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